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California Public Utilities Commission
State of California

COMMENTS AND RECOMMENDATIONS
ON CEC STAFF DRAFT REPORT (November 8, 1999)
REGARDING THE TRANSFER OF
PUBLIC ADMINISTRATION OVERSIGHT
FROM THE CPUC TO THE CEC
FOR THE PROGRAM ADMINSTRATION OF
ENERGY EFFICIENCY PUBLIC PURPOSE PROGRAMS

Sacramento, California
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I. Introduction: The Office of Ratepayer Advocates (ORA) welcomes this opportunity to comment on the CEC staff draft report on energy efficiency, pursuant to AB 1105. ORA sees this bill--and the reports by the CEC to the legislature, and the legislation that emerges from these reports---as important follow-up events to the 1996 Restructuring legislation (AB1890).

More precisely, the initial legislative efforts to sustain a purpose for public intervention in a restructured industry for promoting efficiency:

(1) established (as an element of electric public goods charge) as the source of revenues for funding cost-effective energy efficiency and conservation activities;[1]

(2) established public administration oversight responsibilities of these Energy Efficiency Public Purpose Programs at the CPUC;[2] and,

(3) allowed the CPUC to make subsequent decisions regarding the program administration structure and administrator/implementor/consumer relationships.

The events that lead up to the legislative direction in AB1105 to transfer public administration responsibilities for the EEPPP from the CPUC to the CEC need not be recounted here. What is instructive, are the fundamental public policy conclusions of the CPUC regarding the role of the utilities in a restructured energy industry, following a two year failed effort to create a program administrative structure that is independent from the inherent conflict of interests of the UDCs in a restructured energy industry. The conclusions are as follows:[3]

- Continuing with utility administration of energy efficiency programs over the long term, however, raises significant concerns over (1) the motivation of utilities in a

[1] For the energy efficiency element of the public goods charge assessed by the investor-owned electric utilities as of 1/1/1998, the legislative direction (beyond the cost-effectiveness standard) is limited to setting minimum amounts of annual electric revenues, a directive not to co-mingle these revenues, and a surcharge end date that corresponds to the end date of expected cessation of the rate freeze. These terms and conditions for legislative direction are different for the electric investor-owned utilities than for the electric municipal utilities.

[2] This latter feature of California s restructuring legislation refers to the fact that in 1996 the legislature could have treated the public administration function for the electric energy efficiency surcharge the same way it treated the R&D and renewables surcharge assigning public administration responsibilities to the CEC. AB 1105, in other words, is nothing more and nothing less than a legislative statement of intent to do in the relatively near future, what it did not do in 1996. AB1105 provides a major opportunity and responsibility to assume pubic agency leadership in the public purpose area of energy efficiency.

[3] D. 99-03-056

restructured industry and (2) the continued need for substantial regulatory oversight of utility administrators. These concerns have not been assuaged by time and with interim utility administrators. (Finding of Fact #7, emphasis added);

- Directing interim utility administrators to transfer program implementation activities away from themselves and toward other market participants will reduce the potential conflicts between the utilities role in the newly competitive energy services industry and their continued role as interim administrators for energy efficiency (Finding of Fact # 8, emphasis added);

- A legislatively mandated nonprofit organization to carry out energy efficiency program administration beyond 2001 appears to be the best way to allow the realization of independent administration without the legal and technical barriers the Commission has faced. There are significant legal uncertainties that remain when considering alternative structures for independent administration. (Finding of Fact # 8, emphasis added); [4]

- Interim utility administration of energy efficiency programs should not continue past December 31, 2001 (Conclusion of Law #2).

In making recommendations to the legislature pursuant to AB1105, ORA believes that the CEC should accept these basic elements of the CPUC conclusion of the need for the legislature to establish a non-profit entity , and build on it to seek further, more precise, and more definitive legislative direction than was provided to the CPUC under AB1890 (Section 381 of the PU Code).

As described throughout the remainder of ORA s comments, the further direction from the legislature that is needed includes a carefully delineated role for the CEC (as opposed

[4] The text of this March 18, 1999 decision includes the following statements that support this finding of fact: Our preference is to establish a legislatively mandated nonprofit organization, assuming that funding for energy efficiency is authorized beyond 2001. We believe that this non-profit structure will ensure that energy efficiency is efficiently administered by an independent entity in the market, consistent with the goals we established in D. 97-02-014. This decision (D. 97-02-014) is an especially important and useful document for the CEC and its staff to review as the CEC moves forward with its plans for its reports to the legislature, in particular Finding of Fact # 2: Given the provisions of AB 1890 and the restructured industry environment, utilities face greater disincentives than in the past to develop an independent idustry which will directly compete with the energy services they provide.

to the CPUC) to provide the public administration oversight of the independent program administrative structure.

ORA s comments and recommendations represent the kind of legislative direction that ORA believes is necessary, as well as a critique of the alternatives that would allow for a continuing role of the UDCs as administrators of EEPPP revenues.[5]

II. Background on ORA:

For over a decade, ORA has been heavily engaged in virtually every CPUC proceeding where California s four major investor- owned utilities (PG&E, SCE, SoCalGas, and SDG&E) report the costs and benefits of energy efficiency and conservation activities during the pre-surcharge, Integrated Resource Planning (IRP) era.[6]

ORA expects to remain heavily engaged in CPUC proceedings where four Utility Distribution Companies (PG&E, SCE, SoCalGas, and SDG&E)[7] will be reporting the costs and benefits of energy efficiency and conservation activities funded from the EEPPP surcharge-funded activities for at least the next five years.[8]

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[5] The alternatives referred to here include the position of the CEC staff report of November 8, the UDCs, and the perennial champion of a permanent administrator role for the UDCs, NRDC.

[6] The energy efficiency activities of the investor-owned during the IRP era represent the dominant subset of activities of the full panoply of demand-side management (DSM) activities, which included load management programs (dispatchable and non-dispatchable), fuel substitution programs, load retention programs, and load building programs. Under the terms and conditions of the regulatory compact in this area between the CPUC and the investor owned utilities, the utilities are required to continue to report the costs and benefits until at least the year 2008 from energy efficiency projects and programs funded from electric and gas revenues collected through 12/31/1997.

[7] In contrast to the four investor-owned utilities that administered energy efficiency programs during most of the 1980 s and 1990 s, these four UDC s are CPUC-regulated, wholly-owned subsidiaries of PG&E Corporation, Edison International, and Sempra Energy Corporation. Each of these three investor owned and unregulated energy companies are also the parent companies of dozens of other subsidiaries. The relationships between these UDC-affiliated subsidiaries of PG&E Corporation, Edison International, and Sempra Energy remain subject to the CPUC s affiliate rules.

[8] Assuming: (1) current CPUC intentions to retain these UDC s as Program Administrators of EEPPP through the end of 2001; and, (2) a continuation of the current CPUC practice of subjecting the UDC program administrators to annual, post-implementation review of reported accomplishments of prior year accomplishments in an evidentiary hearing. This annual, post-implementation review of reported accomplishments of the UDCs has been the forum for verifying UDC-reported costs, reported benefits, and shareholder earnings claims since 1995 in the Annual Earnings Assessment Proceeding (AEAP). The 1999 version of this proceeding was by far the most contentious to date and represents a harbinger of the kinds of disputes that are likely to require litigation for the next four AEAPs. If the CEC is seriously considering

ORA s interests in remaining engaged in any future energy efficiency activities funded from revenues collected from ratepayers after 2001 will depend on the nature of the changes in public administration and changes and changes in program administrative structure that emerge from the redirections established by AB1105.

Regardless of where the public administration oversight functions end up (the CPUC, the CEC, or some successor agency to either of these agencies) and regardless of what kind of program administrative structure emerges (UDC s, CEC staff, a legislatively-created non-profit, or a non-profit selected through a competitive procurement process, or some hybrid of this range of alternatives), ORA will want to continue to: (1) have access to information on how these public goods charge funds have been spent, and (2) have an opportunity to participate in any process that assesses the benefits to consumers attributed to these activities.

III. Summary of ORA s Recommendations for Legislative Direction for a CEC Public Administration Role, an Independent Program Administrative Structure, and a Competitive Energy Efficiency Service Provider Industry:

ORA s position on the basic, threshold, issue of whether there should even be an extension of the electric surcharge for energy efficiency beyond 2001, or whether there should be a gas surcharge for energy efficiency at all, will be heavily conditioned on the following six public policy principles relevant to use of public funds to intervene in energy efficiency markets and the emerging industry that provides energy efficiency products and services:

(1) no role whatsoever for any UDC as Program Administrators for any programs funded with revenues collected after the end of 2001, regardless of whether the

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assuming public administration oversight of UDCs acting as a program administrator, a careful review of the 1999 AEAP is warranted.

oversight of UDC administrator(s) remains with the CPUC or is established at the CEC or any other state agency; [9]

(2) no role whatsoever for any UDC or UDC affiliate or individual who is compensated by a UDC or UDC affiliate as a program evaluator for any programs administered with post 2001 revenues, but with the continuation of revenues to fund on-going data collection activities at the CEC to sustain a role for the CEC public information role; [10]

(3) a limited, competitive, role for affiliates of any of the UDCs in accessing public goods charge funds; [11]

(4) no collection of revenues from large customers and no access to (eligibility for participation) these customers; [12]

(5) a limitation of the use of revenues in existing nonresidential customer markets to a Standard Performance Contract (SPC) program design for lighting and HVAC products;[13]

(6) an end date for any surcharge that is no later than 2006.[14]

ORA believes that these six public policy principles represent a position that accounts for the energy efficiency lessons learned at the CPUC and establishes a forward looking

[9] Reference to other state agency is the Electricity Oversight Board or any successor/replacement to that entity such as a super agency that would merge the CEC and EOB.

[10] Reference to the CEC public information role includes, but is not limited to, the data collection rights and responsibilities of the CEC and the UDCs according to the rules and regulations established in the CEC s AHIC process.

[11] This is a necessary condition, regardless of the entity (entities) that are designated to perform a role in a Independent Program Administrative structure.

[12] This principle is based on ORA s position that large customers: (1) are no longer in need of public subsidies to make informed energy and energy efficiency decisions (i.e., they are more likely to be free riders than other customers, given their relative sophistication about energy-usage in their facilities and fully capable of acquiring assistance regarding energy efficiency options); (2) have been major beneficiaries of subsidies for products and services for much of IRP era of subsidization, probably to the point of being over-represented relative to their contribution to the funds and programs administered by the UDCs.

[13] This principle would support a focused and major support for: (1) two of the most important end uses that account for major peak demand (the time period for which system reliability concerns are the greatest); and, (2) the emerging competitive EESP industry which exists in nonresidential customer markets.

[14] By definition, an end date or sunset means that without subsequent legislation action to the contrary, the collection of the revenues ends; obviously legislators can, at some point prior to or subsequent to that end date, enact legislation that will change any end date or create a new surcharge period. An end date or sunset does not signal a definitive termination of a surcharge; it does signal a need for a serious review at the legislature.

foundation for establishing a convergence of public interests, ratepayer interests, and consumer needs in the electric industry restructured era that is underway. The remainder of ORA s comments provide further detail in terms of additional justification for these six public policy principles, and more specific comments on the range of issues and alternatives being proffered by the CEC staff report and others participating in the AB1105 process.

IV. ORA s Position Regarding the Extension of the Energy Efficiency Portion of the AB1890 Public Goods Charge(s)

The lessons that ORA believes it has learned from years of engagement on energy-efficiency matters at the CPUC has left a pronounced effect on two basic questions:

- Are ratepayer interests in energy-efficiency matters better served with public administration responsibilities at the CPUC or the CEC?; and,
- If the legislature or the CPUC determine that revenues from ratepayers should be collected for cost-effective energy efficiency activities after 2001, what are the necessary (minimum) conditions for protecting ratepayer interests? [15]

At this juncture of the process, it is ORA s position that:

(1) the CEC is the energy agency that should assume public administration oversight responsibilities for cost-effective EEPPP activities;

(2) the transfer of public administration responsibilities for EEPPP activities should occur if and only if the legislature provides more definitive direction to the CEC about public administration responsibilities than was provided to the CPUC;

(3) the legislative direction to the CEC regarding its public administration responsibilities should include more definitive direction about the program administration structure than was provided to the CPUC;

[15] There are numerous permutations to this basic need question, each of which would require lengthy comments. For the sake of brevity, the following represents a list of alternative ways to pose the basic need question, along with a truncated ORA position: Should there be a cost-effectiveness standard? (yes); Is there a need for gas revenues as well as electric revenues (no; cost-effective gas measures, if any, can be promoted with activities supported by electric revenues without any meaningful class equity

(4) the legislative direction regarding public administration oversight should result in a minimal need for coordination between the CPUC and the CEC and better integration of CEC oversight responsibilities for energy efficiency with the supply-side operations of the ISO, especially in the area of reliability planning and decision-making process of choosing between proposed T&D infrastructure projects and lower cost options on the customer side of the meter;

(5) the most effective means of minimizing the need for on-going coordination between the CEC and CPUC on energy efficiency matters is to end the tenure of the UDCs as Program Administrators and create a program administration structure that is free of the inherent conflict of interests between the private interests of the UDCs as administrators and the implementor/customer transactions that characterize the emerging, competitive, energy and energy efficiency market conditions.

V. The Common Flaws of both the NRDC Regulatory Model vs the CEC Contract Model :

A central element of ORA s position regarding the nexus of public and program administration issues that confront the CEC at this point is perhaps best described in the context of the regulatory model proposed by the NRDC and the UDCs versus the contract model put forth in the CEC staff report. ORA believes that each of these approaches suffer from a common flaw of requiring on-going and unnecessary interactions and coordination between the CEC and the CPUC.

The common cause of this common flaw is the excessive dependence on the UDCs beyond the end of 2001. In each model, the UDCs will need to report (and be held accountable for) the costs and benefits attributable to their administration of these ratepayer revenues. The CEC will need to depend on (and seek) CPUC support in a CPUC proceeding in order to implement CEC orders/requests to the CPUC. [16]

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concerns)? Is there value/net benefits to ratepayers/society from prior year interventions in energy efficiency markets (irrelevant as a determinant for the need to continued intervention).

[16] Further explanation of some of the kinds of continued interaction between the CPUC and the CEC that will attend any role of the UDCs as program administrators are provided throughout these comments. These interactions include: the on-going development and application of affiliate rules pertaining to UDC affiliates acting as Energy Service Providers (ESPs) and Energy Efficiency Service Providers (EESPs); the

The nature, timing, and degree of interaction between the CEC and the CPUC that will necessarily attend any decision to retain any one or each of the UDCs as administrators of energy efficiency funds may be more with some proposed models (e.g., the NRDC s regulatory model) than others (e.g., the CEC staff proposed contract model). [17] Nevertheless, ORA believes that any decision at the legislature or the CEC that contains a feature that retains a role for any UDC as a program administrator will require ongoing interaction between the CEC and the CPUC. Moreover, any continued co-dependency between the CEC and the CPUC on energy efficiency matters is bound to complicate---and delay---the continuation of uninterrupted services for energy efficiency products.

Conversely, if the legislation governing the energy efficiency surcharge removes the UDCs and other for-profit entities as Program Administrators and replaces them with non-profit entities, ORA will seek a minimal opportunity to participate in any CEC or CPUC proceedings where the program administrator(s) report costs and benefits attributable to their administration of these ratepayer revenues. More importantly, a program administration structure that is limited to non-profit entities, will minimize, if not eliminate, the need for on-going CEC/CPUC interactions. [18]

VI. The Reality and Importance of the UDC Conflict of Interest Issue(s):

ORA s first and most central threshold public policy principles---no UDC administrator role is captured by the CPUC s Conclusion of Law #2 in its March, 1999 decision:

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ongoing development and application of Performance Based Ratemaking (PBR) mechanisms; the treatment of energy efficiency assets and liabilities connected with revenues collected through the end of 1997 and assets and liabilities connected with energy efficiency revenues collected and spent during the surcharge period (1/1/98 through 12/31/2001), and the on-going development and application of the CPUCs Consumer Education programs and consumer protection mechanisms.

[17] The CEC staff model (or any variation that would allow one UDC to administer funds collected by the ratepayers of another UDC guarantees problems and disputes between the UDCs, including legal challenges that will seriously complicate any negotiations between the CEC and the UDC administrator regarding terms and conditions of the contract with the UDC administrator) creates different kinds of CPUC spillover effects than would the NRDC regulatory model.

[18] ORA includes municipal utilities, local governments, and the CEC itself as entities that can and should be considered for a role in the Independent Program Administrative structure.

- Interim utility administration of energy efficiency programs should not continue past December 31, 2001.

Clearly this conclusion was not reached by either the CEC staff, NRDC, or the UDC s. ORA believes that the CPUC s conclusion on this very basic point is correct and that it is correct for the right reasons---in a restructured industry, there is an inherent conflict of interest between the UDCs and consumers.

In developing the CEC Committee report, therefore, ORA believes it is necessary to further describe the nature of the conflict. The conflict of having the UDCs administer funds established as a public goods charge to subsidize energy efficiency products and energy efficiency service providers is simple and direct---the fiduciary interests of the UDC s (maximize earnings opportunities and profits of their parent companies by increasing the sale of their commodity) are fundamentally and irreversibly misaligned with the interests of any customer (ratepayer) who wishes to purchase/pay for less of the commodity being sold. [19]

The reality of a misalignment of UDC and consumer interests is relatively new. During the Integrated Resource Planning Era (until the mid-1990 s), it could be (and was) argued that ratepayer interests and the interests of a fully integrated utility were aligned by the full set of regulations that compensated the utilities for lost revenues and for lost earnings opportunities from displaced/deferred/avoided supply-side projects.

[19] This fundamental and, in ORA s view, intractable and irreversible conflict of interest need not and should not be personalized. ORA has no quarrel with those who assert that the staff of the four major UDC s in California are competent individuals and knowledgeable about energy markets, energy efficiency markets, and well informed on issues regarding why customers make energy-related choices they do. The current personnel who constitute the current energy efficiency Program Administrator structure in California represent the legacy of nearly twenty years of experience and institutional knowledge about such matters.

Restructuring actions at the CPUC, the CEC, and the legislature dismantled that alignment of customer/integrated utility interests regarding energy efficiency choices. These actions include:

(1) the closure of the BRPU process and proceeding thereby removing a basis or forum for determining the value of costs avoided/deferred by reductions in demand;
(2) the elimination of California s version of lost revenue protection (ERAM); and,
(3) the move to replace general rate cases with Performance Based Ratemaking (PBR) mechanisms.

The very regulatory instruments that were used to overcome the inherent interest of a utility to buy and use more the product it is selling have been dismantled. During a fully integrated resource planning regulatory structure governing a fully integrated electric industry, the appeal for making energy efficiency a profit center for utilities had some merit. Without all of these regulatory trappings, and with the corporate restructuring that has already well underway, such appeals have no merit.

The energy efficiency competency (e.g., skills) of the UDC is not the issue. Conflict of interests between the business units of the UDCs that pay the salaries of these individuals and the interests of consumers of electricity and natural gas is the issue. [20]

VII. The Myth of the PBR-fix to the Conflict of Interest(s) of the UDCs:

Assertions that the conflict of interest between the UDCs and consumers can be removed or mitigated by the PBR fix should, in ORA s view, be eschewed as a hollow remedy. In any case, this purported remedy is beyond the control of the CEC. The ratemaking details of a Performance Based Ratemaking (PBR) mechanism will be determined on a UDC-specific basis at the CPUC. These mechanisms (intended to replace the need for

[20] This same conflict of interest exists between any for-profit entity (UDC, or other aspiring provider of either energy services or energy efficiency services) and interests of consumers of electricity or natural gas that is also affiliated with an implementer (beneficiary) of EEPPP revenues. The conflict of interest is the same; the degree of the

general rate cases) will most likely be different for the gas UDCs and the electric UDCs and between UDCs that are enfranchised as dual fuel (electricity and natural gas) UDCs.[21]

The issues and considerations of these details go far beyond the consideration of whether they are good or bad for energy efficiency. Unless the CEC intends to seek and count on legislation that micro-manages the CPUC by ordering it to adopt---and enforce a specific kind of PBR for specific UDCs, ORA recommends that the CEC simply ignore any suggestions that a PBR fix means anything. [22]

VIII. The Myth of a CEC/UDC Contract-based Approach to Regulating a UDC Program Administrator:

With or without an energy efficiency friendly PBR regime, ORA is not convinced that the UDC conflict(s) of interest can be solved by simply hiring one or more UDCs as program administrator(s). This model presumes a capability and commitment of the CEC and/or its staff to negotiate the on-going relationships with a UDC as part of the process of: (a) making choice between competing UDC s for a monopoly provider of administration services statewide (i.e., beyond the CPUC determined geographic service

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conflict is much greater with the UDCs given their unique status in the energy industry as an entity that remains regulated by the CPUC.

[21] In the absence of ERAM, the lost revenue debate in energy efficiency circles typically revolves around the a PBR mechanism that is based on rates versus one that is based on revenues. In general terms, a PBR mechanism that is based on rates compels the UDC to compete on price with non-UDC providers of electricity, whereas a PBR mechanism based on revenues makes the UDC indifferent to fluctuations in demand caused by increases or decreases in demand. The latter type of PBR gives the UDC a competitive edge vis- -vis non-UDC providers who do not have such profit protection ; whether this has any measurable or meaningful effect of eliminating or mitigating the conflict of interest considerations is a matter of dispute.

[22] ORA has not conducted a complete review of which participants (other than NRDC) in the CEC AB1105 exercise have taken a PBR fix position to the conflict of interest dispute. If the UDCs are ambiguous or contradictory on this issue, it is because the details of their positions--past, present, or pending are fungible. Nor is ORA s position on the PBR details necessarily consistent in each past, present, or pending PBR proceeding. What is clear is that: (1) the details of a PBR mechanism are not and should not be determined by whether the PBR mechanism as a whole is driven by whether it makes the UDC indifferent to changes in sales that occur between the adopted base revenues and the time period over which actual (recorded) revenues are collected; (2) the ratemaking issues embedded in a PBR mechanism are complex, contentious, and will be resolved over time at the CPUC.

territories) and between the energy efficiency provided services of a designated UDC (e.g., the default provider of billing services); (b) establishing the terms and conditions for the basis for performance of the selected UDC; (c) resolving subsequent disputes between the CEC and selected UDCs without getting embroiled in the regulatory apparatus at the CPUC that will remain responsible for ratesetting and profit-seeking opportunities of the UDCs and rules that govern transactions between these UDCs and their affiliates.

As presented and proposed in the CEC staff report, this model is not much different than the model that was tried and failed at the CPUC during the 1997-1998 period. Presumably the CEC staff either did not understand or disagrees with the CPUC having gone down its version of contracts model. Perhaps they are correct; before going down the contracts path much further, however, ORA believes the Committee should revisit and more fully consider Finding of Fact #8 in the CPUC s March, 1999:

- A legislatively mandated nonprofit organization to carry out energy efficiency program administration beyond 2001 appears to be the best way to allow the realization of independent administration without the legal and technical barriers the Commission has faced. <u>There are significant legal uncertainties that remain when considering alternative structures for independent administration</u>. (Finding of Fact # 8, emphasis added);

IX. Conclusion: ORA s Recommendations for the Direction Needed for Legislation in 2000 Regarding the Transfer of Public Administration to the CEC, the Creation of an Independent Program Administrative Structure, and the Creation of Competitive Energy Efficiency Markets and Industries.

ORA recommends that the CEC s Energy Efficiency Committee determine that it wishes to seek legislation in 2000 that is consistent with the findings and conclusions of the CPUC in March, 1999 regarding the need for a legislatively determined non-profit entity for the Independent Program Administrator function and end the role of UDCs as administrators as of the end of 2001.

With this kind of clear separation of access of the UDCs to ratepayer funds to administer programs that promote cost-effective energy efficiency and conservation activities and clear determination that the most expeditious means of creating an Independent Program Administrative structure, ORA hopes that the Energy Efficiency Committee will then be able to fully consider the merits of the additional public policy principles articulated in Section III of these comments.

In considering the full set of ORA s recommended public policy principles for funding cost-effective energy efficiency activities, ORA believes the CEC can definitively establish a leadership position for the public administration oversight role envisioned with AB1105. ORA believes that this CEC leadership role can and should include the following features:

- policy and program design direction to CEC staff to serve as Program Administrators (and replace UDC administrators) in New Construction markets, in conjunction with a co-administrator role with municipal utilities and local/regional public agencies;[23]

- policy and program design direction to a legislatively-created non-profit organization serving as the Program Administrator for Standard Performance Contracting (SPC) programs, thereby continuing support for the emerging EESP/ESCO industry the effects of energy efficiency choices on customer bills;[24]

[23] Who could legitimately challenge the competency of existing CEC staff in replacing the UDC new construction staff in determining the costs and benefits of various energy efficiency measures that will produce a building stock that is more efficient than the CEC s Title 24 standards? Who could legitimately challenge the capabilities of existing CEC staff in knowing who the players are in the new construction market (the building and building design industry and local officials who are expected to enforce state standards)?

[24] Common sense suggests that with a non-profit entity administering an SPC program, there would be minimal concerns about the Program Administrator using this position to prejudicially allocate funds to a for-profit affiliate, or a preferred customer; UDC-reported data confirms the common sense position that an SPC program (compared to traditional rebates) requires limited staff resources; the very nature of a well designed SPC program means that the Program Administrator needs little knowledge of the costs or benefits of specific products, since these decisions are made by the EESP on behalf of the customer or the customer acting as a project sponsor is doing so on an informed, but caveat emptor basis; common sense and experience to date dictate that a well designed SPC program will deliver reductions in energy use that are of greater or comparable reliability than estimates from traditional UDC-sponsored rebates; common sense and existing reporting conventions make it relatively easy to track the ESCO industry in terms of number of competitors, market share, and other indicators of this emerging energy efficiency industry.

- a prominent and enhanced role of the CEC to provide direct access to residential customers regarding information and financial assistance opportunities regarding energy efficiency choices for reducing their bills;[25]

- an enhanced CEC staff capability (without additional staff resources) for market surveillance, reporting requirements to Program Administrators in each of the three Program Areas, and report production and dissemination to the public and the legislature regarding the costs and benefits of EEPPP activities.[26]

To be effective, the overall structure for Public Administration and Program Administration structure advocated by ORA will require specific legislative direction and supervision. Since AB1105 clearly anticipates such legislation, ORA believes that such details can and should be spelled out during the process of creating that legislation.

No approach to the multiple and interrelated set of questions regarding public administration, program administration, program implementation, and the assessment of cost-effective energy efficiency activities is problem-free or politically acceptable to all parties. The CEC has a unique opportunity to make choices and seek the requisite legislative support for those recommendations.

ORA comments offer an approach that it believes is fundamentally different from the approach provided by the CEC staff or the NRDC/UDC collection of interests. ORA believes that its approach is also consistent with the basic conclusions of the CPUC and its experiment to create an Independent Program Administrative structure in a restructured energy industry.

[25] The CEC already has comprehensive data on the costs and benefits of individual measures that are most effective in reducing electric residential bills (lighting and high efficiency refrigeration); the CEC already has the expertise to create and maintain an internet-based audit for single-family residents; internet-based information technology hardware and software has already matured to the point where low/no cost information services could be combined with e-vouchers for low cost measures and products such as lighting and high efficiency refrigerators.

[26] The only concern in this regard is the possibility that in the existing residential and new construction markets (residential and nonresidential), the CEC might be playing simultaneous roles of Public Administration, Program Administrator, and Program Evaluator, much as they are with Public Interest R&D public purpose funds. ORA believes that these kinds of problems are much easier to avoid and/or mitigate than the financial/commercial types of conflicts of interests inherent in allowing UDCs continue to act as Program Administrators.